IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

FRIDAY, THE 5TH JANUARY 2007 / 15TH PAUSHA 1928

WP(C).No. 643 of 2007(B)

AGAINST THE ORDER IN I.A.3298/2006 IN OS.1100/1997 of
I ADDL. MUNSIFF'S COURT,THRISSUR

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PETITIONER:

PAUL, S/O.CHITTILAPPILLY OUSEPH,
CHALAKKAL VILLAGE, THRISSUR TALUK.

BY ADV. SRI.BABU CHERUKARA

RESPONDENT:

KURIAN, CHITTILAPPAILLY,
S/O.KUNATHU CHERU, THOLOOR VILLAGE, DESOM,
THRISSUR TALUK.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 05/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.SASIDHARAN NAMBIAR, J.

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W.P.(C)No.643 OF 2007

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DATED THIS THE 5TH DAY OF JANUARY, 2007

JUDGMENT

Petitioner is first plaintiff in O.S.1100 of 1997 on the file of Munsiff Court, Thrissur. Petitioner filed I.A.3298 of 2006, an application under Order Order XXVI Rule 10 of Code of Civil Procedure to set aside the report submitted by Commissioner. Under Ext.P7 order, learned Munsiff dismissed the application. It is challenged in this petition filed under Article 227 of Constitution of India.

2. Learned counsel appearing for petitioner was heard. The argument of learned counsel appearing for petitioner was that learned Munsiff should have directed the Commissioner to fix the property with reference to the side measurements and to fix the extent on the basis of side measurements and the dismissal of Ext.P7 order is therefore to be quashed.

3. As held by this court in A.Narayani @ Kittan V. Krishnan(1996(2) KLJ 489), an order passed by the trial court refusing to set aside the report submitted by the Commissioner or dismissing an application for

remitting the report back to the Commissioner cannot be interfered in exercise of the extra ordinary jurisdiction of this court under Article 227 of Constitution of India. The trial court is best equipped to decide the matter. It is an order in a interlocutory application. If aggrieved and the suit is decided against petitioner, he is at liberty to challenge the order, along with final judgment. Petitioner is also entitled to adduce evidence in support of his objection raised in I.A.3298 of 2006 and to cross examine the Commissioner, if so advised.

Writ petition is dismissed.

M.SASIDHARAN NAMBIAR, JUDGE

lgk/-